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U.S. Citizenship
and Immigration
Services

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MAR 04 2004

FILE:

Office: LOS ANGELES, CA

Date:

IN RE:

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was initially present in the United States without lawful status on June 25, 1991. The applicant was found to be inadmissible to the United States under sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and 212(a)(7)(A)(i)(I), for having attempted to procure admission into the United States by fraud or willful misrepresentation on December 11, 1995. On December 13, 1995, the applicant was removed from the United States and barred from reentry for a period of one year. The applicant illegally reentered the United States within one year of her removal. The applicant married a native of Mexico and legal permanent resident of the United States in Mexico on April 4, 1991. The applicant is the beneficiary of a Petition for Alien Relative (Form I-130) approved on August 17, 1992. The applicant seeks the above waiver of inadmissibility in order to remain in the United States with her legal permanent resident husband and U.S. citizen children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. See Decision of the Acting District Director, dated December 16, 2002.

On appeal, counsel states that the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] used an incorrect standard of hardship in evaluating the evidence presented and in deciding the waiver.

The record contains a copy of the marriage certificate and translation for the applicant and her spouse; letters of support; a copy of the Mexican birth certificate and translation for the applicant; an affidavit of the applicant's spouse, undated; copies of the U.S. birth certificates of the applicant's three children; a quote for costs of child care at Robles Family Child Care; verification of the employment of the applicant's spouse; copies of tax and financial documents for the couple and copies of identification documents issued to the applicant and her spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

- (ii) Falsely claiming citizenship. —

(I) In General

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.

- (iii) Waiver authorized. -- For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant attempted to procure admission into the United States on December 11, 1995, by falsely claiming to be a United States citizen.

Counsel contends that the applicant should not be held to a standard of extreme hardship since her false claim to U.S. citizenship occurred prior to the enactment of section 344 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) which amended section 212(a)(6)(C) of the Act. See Notice of Appeal to the Administrative Appeals Office, dated February 17, 2003. Counsel states that IIRIRA directed INS [CIS] to apply the extreme hardship standard to false claims to U.S. citizenship that occurred on or after enactment, specifically September 30, 1996. *Id.* at 1-2.

The AAO finds counsel's argument unpersuasive. The AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. See section 212(a)(6)(C)(ii) and (iii) of the Act. IIRIRA provisions afford aliens in the applicant's position, those making false claims to U.S. citizenship prior to September 30, 1996, the eligibility to apply for a waiver, but do not additionally afford them consideration of their waiver application under the standard applied before September 30, 1996, as contended by counsel.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

See Memorandum by Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's husband. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel offers the affidavit of the applicant's spouse as evidence of extreme hardship to him imposed by the applicant's inadmissibility to the United States. The applicant's spouse indicates that he is the sole source of financial support for his family and that if the applicant departs the United States, he will be forced to provide for her in Mexico as well as pay for childcare for his children. See Affidavit of [redacted] undated. The record provides a quote for childcare costs with one care provider. See Quote from Robles Family Child Care. However, the record does not demonstrate that the costs of childcare pose financial hardship to the applicant's husband. Further, the record does not establish that the applicant will be unable to financially support herself from a location outside of the United States. The applicant's spouse indicates that his children will suffer as a result of separation from their mother. The AAO notes that hardship suffered by the children of the applicant is irrelevant to waiver proceedings under section 212(i) of the Act. Hardship experienced by the applicant's children is therefore only considered to the extent that it impacts the hardship suffered by the applicant's spouse, the qualifying relative in the application.

The record makes no assertions regarding the ability of the applicant's spouse to relocate to Mexico to remain with the applicant. The record makes no reference to family of the applicant's spouse who reside outside of the United States. Further, the record does not provide evidence of significant health conditions experienced by the applicant's spouse that could not be adequately addressed in Mexico.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, his situation,

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based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. See Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.